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ABSTRACT

This document describes legal requirements that pertain to the dismissal or demotion of career status employees in the North Carolina Department of Public Instruction. The interpretive analysis section notes that the employer may terminate the employment only for specified reasons and by stated procedures. The grounds for dismissal or demotion must be adequately substantiated, and thorough documentation is essential. A question-and-answer section highlights issues of concern to administrators. The appendix contains North Carolina State law relating to career status employees, specifically: tenure; contract renewal; and contract nonrenewal of principals, assistant principals, supervisors, directors, and public-school career teachers. (LMI)

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A Series of Discussions on Legal Issues in Elementary and Secondary Education

SCHOOL MANAGEMENT ADVISOR

By Harry E. Wilson, Agency Legal Specialist

NORTH CAROLINA DEPARTMENT OF PUBLIC INSTRUCTION EDUCATION BUILDING, RALEIGH, NC 27601-2825 919/715-1000

Issue 26: 1993

BOB ETHERIDGE, SUPERINTENDENT OF PUBLIC INSTRUCTION

Dismissal of Career Status Employees

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LEGAL REQUIREMENTS

G.S. 115C-325, which contains the process for achieving career status and for dismissing or demoting career status employees, is reproduced in full in the Appendix.

INTERPRETIVE ANALYSIS

The term "tenure," which does not appear in our law, often evokes public perceptions of incompetent teachers who are impossible to dislodge because the law is too cumbersome to be of use and is designed to protect those who are least deserving. School officials sometimes object that there are only a few *real* bases for dismissal, so that teachers who should be replaced have no fear of that happening. But tenure, or more correctly career status, is simply the opposite of employment at will. That is, the employer may terminate the employment only for specified reasons and by stated procedures. At-will employees may be terminated for any reason or for no reason, at the will of the employer.

The grounds for dismissal or demotion must be adequately substantiated, and thorough documentation is essential. An isolated incident will most likely not support dismissal, particularly if the teacher is warned and then does not repeat the behavior. Depending on the behavior involved, one incident following an order to stop the behavior may support dismissal. Certainly multiple incidents should do so. A written record of instructions to the teacher should be maintained, and the teacher's evaluations should accurately reflect problems that have occurred and suggestions for improvement. Expectations of proper conduct should be clearly stated. Finally, care must be given to fitting the behavior within the proper ground for dismissal.

Where there is a written record that identifies a specific problem, that states the demand that the offending conduct be stopped, that provides clear expectations of proper behavior, and that subsequent incidents of repeated misconduct by the teacher have occurred, dismissal will likely be upheld.

After July 1, 1995, no one newly hired as or promoted to principal, director or supervisor will be eligible for career status, although the person will retain any career status as a teacher attained before taking the new position. Assistant principals may attain career status only as a teacher, not as an administrator.

Q: What are the grounds for dismissal of career-status employees?

A: The law contains fourteen bases for dismissal:

- inadequate performance
- immorality
- insubordination
- neglect of duty
- physical or mental incapacity
- habitual or excessive use of alcohol or nonmedical use of a controlled substance
- conviction of a felony or a crime involving moral turpitude
- advocating the overthrow of the federal or state government by force, violence or other unlawful means
- failure to fulfill the legal responsibilities of a teacher
- failure to comply with reasonable requirements of the local board
- any cause that is grounds for certificate revocation
- reduction in force [*see* Issue 24]
- failure to maintain a current certificate [*see* Issue 28]

EA026001

The School Management Advisor, a series of comments, questions and answers, and interpretive analyses, is published periodically. Each issue deals with a single topic that is of current concern to school personnel. The contents do not purport to be official legal opinions.

- failure to repay money owed to the State

Q: Aren't some of these grounds almost impossible to rely on in a dismissal case?
A: No, so long as school officials have followed proper procedures and have documented employee expectations, opportunities for the employee to deal with a problem, and resulting employee behavior.

Q: As a specific example, can school officials expect a dismissal for inadequate performance to withstand legal challenge?
A: Yes, although there have been cases in which dismissals have been overturned. Again, laying the proper groundwork is essential for this or any other basis for dismissal.

Q: What does the term "immorality" include?
A: Our courts have said that it does not cover the case of a teacher referring to a student as a whore. However, it should apply to sexual conduct or criminal behavior that violates morality laws and impairs the teacher's classroom effectiveness.

Q: How can school officials prove insubordination?
A: Evidence must show that the employee was given specific directions to stop a certain behavior and continued that behavior afterwards. There must be a repeated willful disregard of express or implied directions of the employer and a refusal to obey reasonable orders. It is unclear how many incidents are necessary to establish repeated disregard of directions. One incident will not be sufficient, but two might be if the behavior is serious enough.

Q: What is "neglect of duty?"
A: Neglect of duty requires that a reasonable person under the same circumstances would have recognized the duty and would have felt obligated to conform to the duty. Teachers have certain duties contained in G.S. 115C-307 and the employing school board, superintendent and principal may establish additional duties. To avoid uncertainty, school officials should clearly communicate these duties to teachers.

Q: Since State law encourages employment of handicapped teachers and there are laws to provide greater rights for the disabled, does the grounds of physical or mental incapacity still have any usefulness?
A: Yes. Our courts have examined claims of both physical and mental incapacity and have provided specific guidance only on the first. While that decision came before the Americans with Disabilities Act (ADA), its guidance should remain useful and may also be applied to mental incapacity. The court said that to support dismissal for physical incapacity, the board must show that the teacher has a present and continuing inability to perform the duties and meet the responsibilities and physical demands normally involved with the job, that the incapacity exists at the time the board dismisses the teacher, and that the incapacity is long-term or indefinite has no reasonable prospect for rapid rehabilitation.

Q: How might the ADA affect a dismissal for physical or mental incapacity?
A: School officials must be careful not to discriminate against qualified disabled employees when they consider dismissal. Since it is unlikely that the board will have employed a teacher who lacked physical or mental capacity for the position at the time of employment, the more likely situation will involve a teacher who, after being hired, has become disabled. If the disability is such that the teacher can no longer perform the essential functions of the job, that person is not a *qualified* individual under the ADA. This means that the law provides no protection. But if the teacher can perform the essential job functions with reasonable accommodations by the board, the board must make those accommodations unless they are financially prohibitive.

Q: Must dismissal for use of alcohol or a controlled substance be based on the teacher's public intoxication or on a criminal conviction?
A: No. One North Carolina dismissal case in-

volved a teacher who was charged with habitual or excessive use of alcohol. The school board heard evidence that the teacher on several occasions had the odor of alcohol on his breath while at school during student contact hours, and that the conduct continued after warnings from his principal. The court upheld the dismissal. In another recent case, felony charges that involved marijuana were dismissed, but the school board had no record of why they were dismissed. The board's dismissal of the teacher for nonmedical use of a controlled substance was upheld.

Q: Is the school board bound by the findings of a panel of the Professional Review Committee?

A: No. The board conducts a hearing to consider the panel's findings, and it may hear evidence in addition to that considered by the panel. Despite even a unanimous panel decision, the board may by a preponderance of competent evidence at its hearing reach the opposite conclusion.

Q: May the panel and the school board consider evidence that law enforcement officers obtained illegally?

A: Sometimes. Unfortunately, the answer will probably be known after the dismissal decision has been appealed to court. Neither a panel nor a board hearing is bound to follow the rules of evidence. If the teacher raises the objection, either body may wish to consult with counsel before going further.

Q: If a teacher is suspended with pay and then reinstated after 90 days because no dismissal proceedings have begun, may the superintendent still initiate dismissal?

A: Yes. The teacher has the right to be reinstated if dismissal is not begun within the 90 days, but not the right to avoid dismissal. The law only limits the length of time a suspension with pay may last.

APPENDIX
State Law Relating to Career Status Employees

§ 115C-287.1. Method of employment of principals, assistant principals, supervisors, and directors.

(a) Tenure of a school administrator who is not ineligible for career status as provided by G.S. 115C-325(c)(3) shall be determined in accordance with the provisions of G.S. 115C-325. For purposes of this section, school administrator means a principal, assistant principal, supervisor, or director: Provided, however, nothing in this section shall be construed to confer career status on any assistant principal or director, or to make an assistant principal eligible for career status as an assistant principal or a director eligible for career status as a director.

(b) Local boards of education shall employ school administrators who are ineligible for career status as provided by G.S. 115C-325(c)(3), upon the recommendation of the superintendent. The first contract between the school administrator and the local board of education shall be for two or four years; subsequent contracts shall be for terms of four years. Contracts shall be renewed only at the end of the contract period. Rolling annual contract renewals are not allowed.

(c) The term of employment shall be stated in a written contract that shall be entered into between the board of education and the school administrator. The school administrator shall not be dismissed or demoted during the term of the contract except for the grounds and by the procedure by which a career teacher may be dismissed or demoted as set forth in G.S. 115C-325.

(d) If the superintendent elects not to recommend the reemployment of a school administrator at the end of the contract's term, the superintendent shall notify the school administrator in writing at least 30 days prior to the end of the contract's term. In the notice the superintendent shall state the reason the school administrator will not be offered reemployment beyond the contract term. No action by the board of education shall be necessary unless the school administrator requests a hearing before the board in accordance with G.S. 115C-45 and G.S. 115C-305. In the event a hearing is requested, the local board of education shall make the final decision concerning whether the school administrator's contract will be renewed. The cause for

nonrenewal may not be for arbitrary, capricious, discriminatory, personal, or political reasons. Any school administrator who is nonrenewed pursuant to this section shall have the right to an appeal in accordance with G.S. 115C-305 and G.S. 115C-325(n).

At least 90 days prior to the end of the contract term, if a superintendent intends to notify a school administrator that the school administrator will not be offered reemployment beyond the contract term, the superintendent shall give the school administrator and the local board of education written notice that termination is likely and the reason that termination is likely. The school administrator shall have the right to request and to participate in a conference with the superintendent at least 60 days prior to the end of the contract term to discuss the reasons for the possible termination. After the conference the superintendent may either recommend reemployment of the administrator or notify the school administrator that reemployment will not be offered.

(e) If the superintendent elects to recommend the reemployment of a school administrator for a successive contract or to recommend a new and extended term of a school administrator's contract, the superintendent may do so at any time after a conference pursuant to subsection (d) of this section or more than 90 days prior to the end of the current contract's term. The board of education may approve or disapprove the superintendent's recommendation for any cause that is not arbitrary, capricious, discriminatory, personal, or political. If the board decides not to offer the school administrator employment beyond the end of the contract's term, the school administrator shall be notified in writing of that fact at least 30 days prior to the end of the contract's term.

(f) If the superintendent or the board of education fails to notify a school administrator at least 30 days prior to the end of the contract's term that the school administrator will not be offered employment beyond the end of the contract term, the school administrator shall be entitled to 30 days of additional employment or severance pay beyond the date the school administrator receives written notice that the contract will not be renewed. The cause for nonrenewal shall not be for arbitrary, capricious, discriminatory, personal, or political reasons.

(g) If the school administrator acquired career status as a teacher prior to appointment as a school administrator, a school administrator whose contract as a school administrator is not renewed or extended by the superintendent or the board of education shall be entitled to reassignment and employment in a teaching position.

§ 115C-325. System of employment for public school teachers.

(a) Definition of Terms. — As used in this section unless the context requires otherwise:

(1) "Career teacher" means a teacher who has obtained career status as provided in G.S. 115C-325(c).

(2) "Committee" means the Professional Review Committee created under G.S. 115C-325(g).

(3) "Day" means calendar day. In computing any period of time, Rule 6 of the North Carolina Rules of Civil Procedure shall apply.

(4) "Demote" means to reduce the compensation of a person who is classified or paid by the State Board of Education as a classroom teacher, or to transfer him to a new position carrying a lower salary, or to suspend him without pay to a maximum of 60 days; provided, however, that a suspension without pay pursuant to the provisions of G.S. 115C-325(f) shall not be considered a demotion. The word "demote" does not include a reduction in compensation that results from the elimination of a special duty, such as the duty of an athletic coach, assistant principal, or a choral director.

(5) "Probationary teacher" means a certified person, other than a superintendent, associate superintendent, or assistant superintendent, who has not obtained career-teacher status and whose major responsibility is to teach or to supervise teaching.

(6) "Teacher" means a person who holds

at least a current, not expired, Class A certificate or a regular, not provisional or expired, vocational certificate issued by the Department of Public Instruction; whose major responsibility is to teach or directly supervise teaching or who is classified by the State Board of Education or is paid as a classroom teacher; and who is employed to fill a full-time, permanent position.

(b) Personnel Files. — The superintendent shall maintain in his office a personnel file for each teacher that contains any complaint, commendation, or suggestion for correction or improvement about the teacher's professional conduct, except that the superintendent may elect not to place in a teacher's file (i) a letter of complaint that contains invalid, outdated, or false information or (ii) a letter of complaint when there is no documentation of an attempt to resolve the issue. The complaint, commendation, or suggestion shall be signed by the person who makes it and shall be placed in the teacher's file only after five days' notice to the teacher. Any denial or explanation relating to such complaint, commendation, or suggestion that the teacher desires to make shall be placed in the file. Any teacher may petition the local board of education to remove any information from his personnel file that he deems invalid, irrelevant, or outdated. The board may order the superintendent to remove said information if it finds the information is invalid, irrelevant, or outdated.

The personnel file shall be open for the teacher's inspection at all reasonable times but shall be open to other persons only in accordance with such rules and regulations as the board adopts. Any preemployment data or other information obtained about a teacher before his employment by the board may be kept in a file separate from his personnel file and need not be made available to him. No data placed in the preemployment file may be introduced as evidence at a hearing on the dismissal or demotion of a teacher.

(c)(1) Election of a Teacher to Career Status. — Except as otherwise provided in subdivision (3) of this subsection, when a teacher will have been employed by a North Carolina public school system for three consecutive years, the board, near the end of the third year, shall vote upon his employment for the next school year. The board shall give him written notice of that decision by June 1 of his third year of employment. If a majority of the board votes to re-employ the teacher, and if it has notified him of the decision, it may not rescind that action but must proceed under the provisions of this section for the demotion or dismissal of a teacher if it decides to terminate his employment. If a majority of the board votes against reemploying the teacher, he shall not teach beyond the current school term. If the board fails to vote on granting career status but reemploys him for the next year, he automatically becomes a career teacher on the first day of the fourth year of employment.

A year, for purposes of computing time as a probationary teacher, shall not be less than 120 workdays performed as a full-time, permanent teacher in a normal school year.

(2) Employment of a Career Teacher. — A teacher who has obtained career status in any North Carolina public school system need not serve another probationary period of more than two years, and may, at the option of the board, be employed immediately as a career teacher. In any event, if the teacher is reemployed for a third consecutive school year, he shall automatically become a career teacher. A teacher with career status who resigns and within five years is reemployed by the same local school administrative unit need not serve another probationary period of more than one school year and may, at the option of the board, be reemployed as a career teacher. In any event, if he is reemployed for a second consecutive school year, he shall automatically become a career teacher.

(3) Ineligible for Career Status. — No superintendent, associate superintendent, assistant superintendent or other school employee who is not a teacher as defined by G.S. 115C-325(a)(6) is eligible to obtain career status or continue in a career status if he no longer performs the responsibilities of a teacher as defined in G.S. 115C-325(a)(6). No person who is promoted to or employed in a principal, director, or supervisor position after July 1, 1995, is eligible to obtain career status as an administrator. If the person acquired career status as a teacher in a local school administrative unit before being promoted to or employed in a principal, director, or supervisor position, the person shall retain career status as a teacher and the person has a right to reassignment to a teaching position in the event the person is not continued in employment as a principal, supervisor, or director.

(4) Leave of Absence. — A career teacher who has been granted a leave of absence by a board shall maintain his career status if he returns to his teaching position at the end of the authorized leave.

(d) Career Teachers.

(1) A career teacher shall not be subjected to the requirement of annual reappointment nor shall he be dismissed, demoted, or employed on a part-time basis without his consent except as provided in subsection (e).

(2)a. The provisions of this subdivision do not apply to a person who is ineligible for career status as provided by G.S. 115C-325(c)(3).

b. Whether or not he has previously attained career status as a teacher, a person who has performed the duties of a principal in the school system for three consecutive years or has performed the duties of a supervisor in the school system for three consecutive years shall not be transferred from that position to a lower paying administrative position or to a lower paying nonadministrative position without his consent except for the reasons given in G.S. 115C-325(e)(1) and in accordance with the provisions for the dismissal of a career teacher set out in this section. Transfer of a principal or a supervisor is not a transfer to a lower paying position if the principal's or supervisor's salary is maintained at the previous salary amount.

When a teacher has performed the duties of supervisor or principal for three consecutive years, the board, near the end of the third year, shall vote upon his employment for the next school year. The board shall give him written notice of that decision by June 1 of his third year of employment as a supervisor or principal. If a majority of the board votes to reemploy the teacher as a principal or supervisor, and if it has notified him of that decision, it may not rescind that action but must proceed under the provisions of this section. If a majority of the board votes not to reemploy the teacher as a principal or supervisor, he shall retain career status as a teacher if that status was attained prior to assuming the duties of supervisor or principal. A supervisor or principal who has not held that position for three years and whose contract will not be renewed for the next school year shall be notified by June 1 and shall retain career status as a teacher if that status was attained prior to assuming the duties of supervisor or principal.

A year, for purposes of computing time as a probationary principal or supervisor, shall not be less than 145 workdays performed as

a full-time, permanent principal or supervisor in a contract year.

A principal or supervisor who has obtained career status in that position in any North Carolina public school system may be required by the board of education in another school system to serve an additional three-year probationary period in that position before being eligible for career status. However, he may, at the option of the board of education, be granted career status immediately or after serving a probationary period of one or two additional years. A principal or supervisor with career status who resigns and within five years is reemployed by the same school system need not serve another probationary period in that position of more than two years and may, at the option of the board, be reemployed immediately as a career principal or supervisor or be given career status after only one year. In any event, if he is reemployed for a third consecutive year, he shall automatically become a career principal or supervisor.

(e) Grounds for Dismissal or Demotion of a Career Teacher.

(1) No career teacher shall be dismissed or demoted or employed on a part-time basis except for one or more of the following:

a. Inadequate performance.
b. Immorality.
c. Insubordination.
d. Neglect of duty.
e. Physical or mental incapacity.
f. Habitual or excessive use of alcohol or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes.
g. Conviction of a felony or a crime involving moral turpitude.
h. Advocating the overthrow of the government of the United States or of the State of North Carolina by force, violence, or other unlawful means.
i. Failure to fulfill the duties and responsibilities imposed upon teachers by the General Statutes of this State.
j. Failure to comply with such reasonable requirements as the board may prescribe.
k. Any cause which constitutes grounds for the revocation of such career teacher's teaching certificate.
l. A justifiable decrease in the number of positions due to district reorganization, decreased enrollment, or decreased funding, provided that there is compliance with subdivision (2).
m. Failure to maintain his certificate in a current status.
n. Failure to repay money owed to the State in accordance with the provisions of Article 60, Chapter 143 of the General Statutes.
o. Providing false information or knowingly omitting a material fact on an application for employment or in response to a preemployment inquiry.

(2) Before recommending to a board the dismissal or demotion of the career teacher pursuant to G.S. 115C-325(e)(1)l., the superintendent shall give written notice to the career teacher by certified mail or personal delivery of his intention to make such recommendation and shall set forth as part of his recommendation the grounds upon which he believes such dismissal is justified. The notice shall include a statement to the effect that if the teacher within 15 days after receipt of the notice requests a review, he shall be entitled to have the proposed recommendations of the superintendent reviewed by the board. Within the 15-day period after receipt of the notice, the

career teacher may file with the superintendent a written request for a hearing before the board within 10 days. If the teacher requests a hearing before the board, the hearing procedures provided in G.S. 115C-325(j) shall be followed. If no request is made within the 15-day period, the superintendent may file his recommendation with the board. If, after considering the recommendation of the superintendent and the evidence adduced at the hearing if there is one, the board concludes that the grounds for the recommendation are true and substantiated by a preponderance of the evidence, the board, if it sees fit, may by resolution order such dismissal. Provisions of this section which permit appointment of, and investigation and review by, a panel of the Professional Review Committee shall not apply to a dismissal or demotion recommended pursuant to G.S. 115C-325(e)(1)l.

When a teacher is dismissed pursuant to G.S. 115C-325(e)(1)l. above, his name shall be placed on a list of available teachers to be maintained by the board. Career teachers whose names are placed on such a list shall have a priority on all positions for which they are qualified which become available in that system for the three consecutive years succeeding their dismissal. However, if the local school administrative unit offers the dismissed teacher a position for which he is certified and he refuses it, his name shall be removed from the priority list.

(3) In determining whether the professional performance of a career teacher is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the published policy of the employing local school administrative unit and to any published standards of performance which shall have been adopted by the board. Failure to notify a career teacher of an inadequacy in his performance shall be conclusive evidence of satisfactory performance.

(4) Dismissal under subdivision (1) above, except paragraph g thereof, shall not be based on conduct or actions which occurred more than three years before the written notice of the superintendent's intention to recommend dismissal is mailed to the teacher. The three-year limitation shall not apply to dismissals or demotions pursuant to subdivision (1)b. above when the charge of immorality is based upon a teacher's sexual misconduct toward or sexual harassment of students or staff.

(f) Suspension without Pay. — If a superintendent believes that cause exists for dismissing a probationary or career teacher for any reason specified in G.S. 115C-325(e)(1)a. through 115C-325(e)(1)j. and that immediate suspension of the teacher is necessary, the superintendent may suspend him without pay. Before suspending a teacher without pay, the superintendent shall meet with the teacher and give him written notice of the charges against him, an explanation of the bases for the charges, and an opportunity to respond. Within five days after a suspension under this paragraph, the superintendent shall initiate a dismissal as provided in this section. If it is finally determined that no grounds for dismissal exist, the teacher shall be reinstated immediately and shall be paid for the period of suspension.

A teacher recommended for suspension without pay pursuant to G.S. 115C-325(a)(4) may request a hearing before the board. If the teacher requests a hearing before the board, the procedures provided in G.S. 115C-325(j) shall be followed. If no request is made within 15 days, the superintendent may file his recommendation with the board. If, after considering the recommendation of the superintendent and the evidence adduced at the hearing if one is held, the board concludes that the grounds for the recommendation are true and substantiated by a preponderance of the evidence, the board, if it sees fit, may by resolution order such suspension.

Provisions of this section which permit appointment of, and investigation and review by, a panel of the Professional review Committee shall not apply to a suspension without pay pursuant to G.S. 115C-325(a)(4).

(f1) Suspension with Pay. — If a superintendent believes that cause exists for dismissing or demoting a probationary or career teacher for any reasons specified in G.S. 115C-325(e)(1)b. through 115C-325(e)(1)j., but that additional investigation of the facts is necessary and circumstances are such that the teacher should be removed immediately from his duties, the superintendent may suspend the teacher with pay for a reasonable period of time, not to exceed 90 days. The superintendent shall immediately notify the board of education of his action. If the superintendent has not initiated dismissal or demotion proceedings against the teacher within the 90-day period, the teacher shall be reinstated to his duties immediately and all records of the suspension with pay shall be removed from the teacher's personnel file at his request.

(g) Professional Review Committee; Qualifications; Terms; Vacancy; Training.

(1) There is hereby created a Professional Review Committee which shall consist of 132 citizens, 11 from each of the State's congressional districts, five of whom shall be lay persons and six of whom shall have been actively and continuously engaged in teaching or in supervision or administration of schools in this State for the five years preceding their appointment and who are broadly representative of the profession, to be appointed by the Superintendent of Public Instruction with the advice and consent of the State Board of Education. Each member shall be appointed for a term of three years. The initial terms of office of the persons appointed from the 12th Congressional District shall commence on January 3, 1993, and expire on June 30, 1995. The Superintendent of Public Instruction, with the advice and consent of the State Board of Education, shall fill any vacancy which may occur in the Committee. The person appointed to fill the vacancy shall serve for the unexpired term of the member of the Committee whom he is appointed to replace.

(2) The Superintendent of Public Instruction shall provide for the Committee such training as he considers necessary or desirable for the purpose of enabling the members of the Committee to perform the functions required of them.

(3) The compensation of committee members while serving as a member of a hearing panel shall be as for State boards and commissions pursuant to G.S. 138-5. The compensation shall be paid by the State Board of Education.

(h) Procedure for Dismissal or Demotion of Career Teacher.

(1) A career teacher may not be dismissed, demoted, or reduced to part-time employment except upon the superintendent's recommendation.

(2) Before recommending to a board the dismissal or demotion of the career teacher, the superintendent shall give written notice to the career teacher by certified mail or personal delivery of his intention to make such recommendation and shall set forth as part of his recommendation the grounds upon which he believes such dismissal is justified. The notice shall include a statement to the effect that if the teacher within 15 days after the date of receipt of the notice requests a review, he shall be entitled to have the proposed recommendations of the superintendent reviewed by a panel of the Committee. A copy of G.S. 115C-325 and a current list of the members of the Professional Review Committee shall also be sent to the career teacher. If the teacher does not request a panel hearing within the 15 days provided, the superintendent may submit his recommendation to the board.

(3) Within the 15-day period after receipt of the notice, the career teacher may

file with the superintendent a written request for either (i) a review of the superintendent's proposed recommendation by a panel of the Professional Review Committee or (ii) a hearing before the board within 10 days. If the teacher requests an immediate hearing before the board, he forfeits his right to a hearing by a panel of the Professional Review Committee. A hearing conducted by the board pursuant to this subdivision shall be conducted pursuant to G.S. 115C-325(j) and (l). If no request is made within that period, the superintendent may file his recommendation with the board. The board, if it sees fit, may by resolution dismiss such teacher. If a request for review is made, the superintendent shall not file his recommendation for dismissal with the board until a report of a panel of the Committee is filed with the superintendent.

(4) If a request for review is made, the superintendent, within five days of filing such request for review, shall notify the Superintendent of Public Instruction who, within seven days from the time of receipt of such notice, shall designate a panel of five members of the Committee, at least two of whom shall be lay persons, who shall not be employed in or be residents of the county in which the request for review is made, to review the proposed recommendations of the superintendent for the purpose of determining whether in its opinion the grounds for the recommendation are true and substantiated. The teacher or principal making the request for review shall have the right to require that at least two members of the panel shall be members of his professional peer group.

(i) Hearing by Panel of Professional Review Committee; Report; Action of Superintendent; Review by Board.

(1) The career teacher and superintendent will each have the right to designate not more than 30 of the 121 members of the Professional Review Committee as not acceptable to the teacher or superintendent respectively. No person so designated shall be appointed to the panel. The career teacher shall specify to the superintendent those Committee members who are not acceptable in his request for a review of the superintendent's proposed recommendations provided for in subdivision (h)(3) above. The superintendent's notice to the Superintendent of Public Instruction provided for in subdivision (h)(4) above shall contain a list of those members of the Committee not acceptable to the superintendent and the teacher respectively. Failure to designate nonacceptable members in accordance with this subsection shall constitute a waiver of that right.

(2) As soon as possible after the time of its designation, the panel shall elect a chairman and shall conduct a hearing in accordance with G.S. 115C-325(j) for the purpose of determining whether the grounds for the recommendation are true and substantiated. The panel shall be furnished assistance reasonably required to conduct its hearing and shall be empowered to subpoena and swear witnesses and to require them to give testimony and to produce books and papers relevant to its investigation.

(3) The career teacher and superintendent involved shall each have the right to meet with the panel accompanied by counsel or other person of his choice and to present any evidence and arguments which he considers pertinent to the considerations of the panel and to cross-examine witnesses.

(4) When the panel has completed its hearing, it shall prepare a written report and send it to the superintendent and teacher. The report shall contain its findings as to whether or not the grounds for the recommendation are

true and substantiated by a preponderance of the evidence, and a statement of the reasons for its findings. The panel shall complete its hearing and prepare the report within 20 days from the time of its designation, except in cases in which the panel finds that justice requires that a greater time be spent in connection with the investigation and the preparation of such report, and reports that finding to the superintendent and the teacher: Provided, that such extension does not exceed 10 days.

(5) Within five days after the superintendent receives the report of the panel, the superintendent shall decide whether or not to submit a written recommendation for dismissal to the board or to drop the charges against the teacher and shall notify the teacher, in writing, of the decision. Within five days after receiving the superintendent's notice of his intent to recommend the teacher's dismissal to the board, the teacher shall decide whether to request a hearing before the board and shall notify the superintendent, in writing, of the decision. If the teacher requests a hearing before the board, the superintendent shall submit his written recommendation to the board with a copy to the teacher within five days after receiving the teacher's request. The superintendent's recommendation shall state the grounds for the recommendation and shall be accompanied by a copy of the report of the panel of the Committee.

(6) Within seven days after receiving the superintendent's recommendation and before taking any formal action, the board shall set a time and place for the hearing and notify the teacher by certified mail of the date, time and place of the hearing. The time specified shall not be less than seven nor more than 20 days after the board has notified the teacher. If the teacher did not request a hearing, the board may, by resolution, dismiss the teacher. If the teacher can show that his request for a hearing was postmarked within the time provided, his right to a hearing is not forfeited.

(j) Hearing Procedure. — The following provisions shall be applicable to any hearing conducted pursuant to G.S. 115C-325(k) or (l) or to any hearing conducted by a board pursuant to G.S. 115C-325(h)(3).

(1) The hearing shall be private.

(2) The hearing shall be conducted in accordance with such reasonable rules and regulations as the board may adopt consistent with G.S. 115C-325, or if no rules have been adopted, in accordance with reasonable rules and regulations adopted by the State Board of Education to govern such hearings.

(3) At the hearing the teacher and the superintendent shall have the right to be present and to be heard, to be represented by counsel and to present through witnesses any competent testimony relevant to the issue of whether grounds for dismissal or demotion exist or whether the procedures set forth in G.S. 115C-325 have been followed.

(4) Rules of evidence shall not apply to a hearing conducted pursuant to this act and boards and panels of the Professional Review Committee may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs.

(5) At least five days before the hearing, the superintendent shall provide to the teacher a list of witnesses the superintendent intends to present, a brief statement of the nature of the testimony of each witness and a copy of any documentary evidence he intends to present. At least three days before the hearing, the teacher shall provide to the superintendent a list of witnesses the teacher intends to present, a brief

statement of the nature of the testimony of each witness and a copy of any documentary evidence he intends to present. Additional witnesses or documentary evidence may not be presented except upon consent of both parties or upon a majority vote of the board or panel.

(k) Panel Finds Grounds for Superintendent's Recommendation True and Substantiated.

(1) If the panel found that the grounds for the recommendation of the superintendent are true and substantiated, at the hearing the board shall consider the recommendation of the superintendent, the report of the panel, including any minority report, and any evidence which the teacher or the superintendent may wish to present with respect to the question of whether the grounds for the recommendation are true and substantiated The hearing may be conducted in an informal manner.

(2) If, after considering the recommendation of the superintendent, the report of the panel and the evidence adduced at the hearing, the board concludes that the grounds for the recommendation are true and substantiated, by a preponderance of the evidence, the board, if it sees fit, may by resolution order such dismissal.

(l) Panel Does Not Find That the Grounds for Superintendent's Recommendation Are True and Substantiated.

(1) If the panel does not find that the grounds for the recommendation of the superintendent are true and substantiated, at the hearing the board shall determine whether the grounds for the recommendation of the superintendent are true and substantiated upon the basis of competent evidence adduced at the hearing by witnesses who shall testify under oath or affirmation to be administered by any board member or the secretary of the board.

(2) The procedure at the hearing shall be such as to permit and secure a full, fair and orderly hearing and to permit all relevant competent evidence to be received therein. The report of the panel of the committee shall be deemed to be competent evidence. A full record shall be kept of all evidence taken or offered at such hearing. Both counsel for the local school administrative unit and the career teacher or his counsel shall have the right to cross-examine witnesses.

(3) At the request of either the superintendent or the teacher, the board shall issue subpoenas requiring the production of papers or records or the attendance of persons residing within the State before the board. Subpoenas for witnesses to testify at the hearing in support of the recommendation of the superintendent or on behalf of the career teacher shall, as requested, be issued in blank by the board over the signature of its chairman or secretary. The board shall pay witness fees for up to five witnesses subpoenaed on behalf of the teacher, except that it shall not pay for any witness who resides within the county in which the dismissal originates or who is an employee of the board. However, no employee of the board shall suffer any loss of compensation because he has been subpoenaed to testify at the hearing. These payments shall be as provided for witnesses in G.S. 7A-314.

(4) At the conclusion of the hearing provided in this section, the board shall render its decision on the evidence submitted at such hearing and not otherwise. The board's decision shall be based on a preponderance of the evidence.

(5) Within five days following the hearing, the board shall send a written copy of its findings and order to the teacher and superintendent. The board shall provide for making a transcript of its hearing. If the teacher contemplates

an appeal to a court of law, he may request and shall receive at no charge a transcript of the proceedings.

(m) Probationary Teacher.

(1) The board of any local school administrative unit may not discharge a probationary teacher during the school year except for the reasons for and by the procedures by which a career teacher may be dismissed as set forth in subsections (e) and (h) to (ı) above.

(2) The board, upon recommendation of the superintendent, may refuse to renew the contract of any probationary teacher or to reemploy any teacher who is not under contract for any cause it deems sufficinet: Provided, however, that the cause may not be arbitrary, capricious, discriminatory or for personal or political reasons.

(n) Appeal. -- Any teacher who has been dismissed or demoted pursuant to G.S. 115C-325(e)(2), or pursuant to subsections (h), (k) or (l) of this section, or who has been suspended without pay pursuant to G.S. 115C-325(a)(4), or any school administrator whose contract is not renewed in accordance with G.S. 115C-287.1, shall have the right to appeal from the decision of the board to the superior court for the superior court district or set of districts as defined in G.S. 7A-41.1 in which the teacher or school administrator is employed. This appeal shall be filed within a period of 30 days after notification of the decision of the board. The cost of preparing the transcript shall be borne by the board. A teacher who has been demoted or dismissed, or a school administrator whose contract is not renewed, who has not requested a hearing before the board of education pursuant to this section shall not be entitled to judicial review of the board's action.

(o) Resignation; Nonrenewal of Contract. -- A teacher, career or probationary, should not resign without the consent of the superintendent unless he has given at least 30 days' notice. If the teacher does resign without giving at least 30 days' notice, the board may request that the State Board of Education revoke the teacher's certificate for the remainder of that school year. A copy of the request shall be placed in the teacher's personnel file.

A probationary teacher whose contract will not be renewed for the next school year shall be notified of this fact by June 1.

(p) Section Applicable to Certain Institutions. -- Notwithstanding any law or regulation to the contrary, this section shall apply to all persons employed in teaching and related educational classes in the schools and institutions of the Departments of Human Resources and Correction regardless of the age of the students.

FOR FURTHER READING:

School Management Advisor, Issue 22, Employment Basics.

School Management Advisor, Issue 23, Employment at Will.

School Management Advisor, Issue 24, Reduction in Force.

School Management Advisor, Issue 25, Nonrenewal of Probationary Teachers.

School Management Advisor, Issue 27, Negligent Hiring and Retention.

School Management Advisor, Issue 28, Certificate Suspension and Revocation.